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Paper No. 4

Royal W. Craig
Law Offices of Royal W. Craig
10 North Calvert Street
Suite 153
Baltimore, MD 21202

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In re Application of
Andrew Ishak
Application No. 10/000,062
Filed: November 2, 2001
Attorney Docket No. ISHAK-PA-1

OFFICE OF PETITIONS

DECISION ON PETITION

This is a decision on the "Petition to Rescind a Notice of Omitted Item(s) in a Nonprovisional Application under 37 C.F.R. §1.181," filed March 5, 2002, which is properly treated as a petition under §1.53(e)(2)¹.

Application papers in the above-identified application were filed on November 2, 2001. However, on January 11, 2002, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Items in a Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, Fig. 2A described in the specification appeared to have been omitted from the application.

In response, applicant timely filed the instant petition. Petitioner asserts, in essence, that Fig. 2A was among the papers filed on November 2, 2001 and that the figure's omission from the application file must be due to outside interference in transit to the Customer Service Center of the Initial Patent Examination Division. In support thereof, petitioner submitted *inter alia* a copy of their return postcard receipt and a copy of the drawings as they maintain they were filed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the Office of Initial Patent Examination (OIPÉ) on November 2, 2001; 2) it specifically identifies the items being filed, including "12 pages of drawing" and 3) it lacks any annotation of nonreceipt of any item denoted on the

¹ (e) Failure to meet filing date requirements.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

postcard. Thus, petitioner has shown that the items denoted, including the 12 pages of drawings, were filed on November 2, 2001.

The application papers already considered received in the Office on November 2, 2001, were reviewed along with the missing figure submitted on petition. These papers together constitute the items described on the postcard receipt as 12 pages of drawings. Petitioner has shown that Fig. 2A was among the items present in the application on the date of deposit and should be included in the original application papers.

Accordingly, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee has been refunded to Deposit Account No. 03-3565, as authorized.

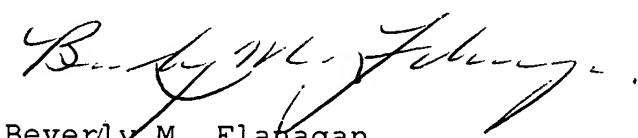
The change of correspondence address, submitted on petition, is acknowledged and made of record.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- processing with a filing date of November 2, 2001, using the application papers received in the Office on that date and Fig. 2A resubmitted on petition filed March 5, 2002.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy